

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Tanesha R. Holder,

Civil No. 18-1395 (DWF/SER)

Petitioner,

v.

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

Warden Barnes,

Respondent.

This matter is before the Court upon Petitioner Tanesha R. Holder’s (“Petitioner”) objections (Doc. No. 3) to Magistrate Judge Steven E. Rau’s June 20, 2018 Report and Recommendation (Doc. No. 2) insofar as it recommends that this matter be dismissed without prejudice for lack of jurisdiction. Respondent filed a response to Petitioner’s objections on July 17, 2018. (Doc. No. 4.) Petitioner filed a response to Respondent’s response on July 25, 2018. (Doc. No. 5.)

The factual background for the above-entitled matter is clearly and precisely set forth in the Report and Recommendation and is incorporated by reference for purposes of Petitioner’s objections. In the Report and Recommendation, the Magistrate Judge explained that Petitioner directly challenges the legality of her sentence and such a challenge must generally be raised in a motion to vacate filed in the sentencing court under § 2255 and not in a habeas petition filed in the court of incarceration. The Magistrate Judge further explained that federal district courts lack jurisdiction to hear a

federal prisoner's collateral challenge to an original conviction or sentence brought in a habeas petition unless the prisoner demonstrates that the remedy under § 2255 is inadequate or ineffective to test the legality of detention (referred to as the "savings clause"). The Magistrate Judge further concluded that Petitioner has not justified the invocation of the savings clause and, therefore, that the Court lacks jurisdiction.

The Court has conducted a *de novo* review of the record, including a review of the arguments and submissions of counsel, pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 72.2(b). After this review, the Court finds no reason that would warrant departure from the Magistrate Judge's recommendations. The Magistrate Judge correctly concluded that Petitioner has not met the bar necessary to invoke the savings clause. Based upon the *de novo* review of the record and all of the arguments and submissions of the parties and the Court being otherwise duly advised in the premises, the Court hereby enters the following:

ORDER

1. Petitioner Tanesha R. Holder's objections (Doc. No. [3]) to Magistrate Judge Steven E. Rau's June 20, 2018 Report and Recommendation are **OVERRULED**.
2. Magistrate Judge Steven E. Rau's June 20, 2018 Report and Recommendation (Doc. No. [2]) is **ADOPTED**.

3. This matter is **DISMISSED WITHOUT PREJUDICE FOR LACK OF JURISDICTION.**

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: September 5, 2018

s/Donovan W. Frank
DONOVAN W. FRANK
United States District Judge